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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

6 EB HOLDINGS II, INC., et al.,  
7 Plaintiff(s),

8 v.  
9 ILLINOIS NATIONAL INSURANCE  
10 COMPANY, et al.,  
11 Defendant(s).

Case No. 2:20-cv-02248-JCM-NJK

Order

[Docket No. 142]

12 Pending before the Court is Plaintiff QXH II's motion to compel. Docket No. 142.  
13 Defendant Illinois National's response relies on various representations, including some that do  
14 not appear in the supporting declaration. For example, the responsive brief indicates that:

15 Determining the exact date on which this [epiphany] occurred will  
16 require Illinois National's counsel to go back through the entirety of  
17 the discovery and investigation it conducted in this case, including  
18 privileged client meetings, going back through the internal work  
product and analysis of counsel, and determine, if possible, when it  
determined the affirmative defense was viable.

19 Docket No. 147 at 11. The Court has not located a corresponding statement in counsel's  
20 declaration. *See id.* at 14-17. Courts do not generally consider representations in briefs that are  
21 not supported by declaration. *O'Bannon v. Nat. Collegiate Athletic Ass'n*, 802 F.3d 1049, 1067  
22 n.11 (9th Cir. 2015). If Illinois National wishes the Court to consider any such factual  
23 representations presented in briefing the instant motion, it must file a supplemental declaration  
24 attesting to those facts by July 29, 2022.

25 IT IS SO ORDERED.

26 Dated: July 25, 2022

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Nancy J. Koppe  
United States Magistrate Judge